

13 December 2010

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Director
Transport & Infrastructure Access Section, Transport & General Prices Oversight Branch
Australian Competition & Consumer Commission

The following submission is made in response to the Submission on the Proposed 2011 Undertaking Issues Paper made by –

- The Australian Grain Exporters Association
- AWB (Australia) Ltd.

1. The Australian Grain Exporters Association (AGEA)

Approach to Pricing

The AGEA submission notes that the

- *‘...publish and negotiate approach (to the development of a commercial port elevation services contract between GrainCorp and grain exporters) has worked...’* and
- That *‘...the measures (taken within that process) have provided a framework which has allowed access seekers to commercially negotiate with GrainCorp.’*

This clearly indicates that GrainCorp’s efforts to build constructive commercial relationships with its members, who are both consumers of GrainCorp’s grain handling services, and grain trading competitors, have been successful.

Port Terminal Protocol Development

With reference to the development of the Port Terminal Protocols (Protocols), the AGEA state that exporters are *‘...satisfied with the consultation process...’* that led to their finalisation.

In their submission, the AGEA refer to a process whereby GrainCorp can *‘...vary the port loading protocols without seeking formal approval from the ACCC.’*

No such process exists, and GrainCorp cannot unilaterally modify the Protocols. GrainCorp is required to notify the ACCC of any proposal to modify the Protocols, and any proposed modification is subject to a formal consultation process and period.

Port Protocols Operations

The GrainCorp Protocols contain significant flexibility to efficiently and effectively, manage port elevator demand. For example, exporters are able to dissect and move booked elevation capacity between requested elevation periods, and between elevators. This allows exporters to shift the focus of their export program, and to respond to market or grain supply dynamics.

GrainCorp believes that the current Protocols, based upon the first-in-first-served port elevation capacity booking process, are fair, transparent and superior to the systems used by both CBH and Viterra to manage their respective shipping stems.



GrainCorp

In its submission, AGEA commented on the efficiency of the first-in-first-served port elevation capacity booking process when *'...impacted by ...factors such as weather' ..*

GrainCorp, however, wishes to clarify that adverse weather conditions tend to affect vessel loading, regardless of the system used to book port elevator capacity.

Other Matters

Importantly, the AGEA submission observes that GrainCorp has neither over-allocated elevation capacity to, or favoured, GrainCorp's trading division.

Further, the AGEA has not raised any concerns over the proposed term of the new Undertaking (1 October 2011 to 30 September 2014), or the publication of compliance reporting.

2. AWB (Australia) Ltd.

Waiver of Booking Fees February 2010

In its submission, AWB criticises GrainCorp for taking the decision in February 2010 to waive booking fees for exporters. AWB posits that the port elevator capacity booking fee imposed by GrainCorp *'...is intended to act as a disincentive to shippers to over nominate port capacity.'*

GrainCorp acknowledges that the booking fee is a means by which port elevator capacity booking speculation can be prevented, but the decision to waive the fees was made in recognition of the dramatic changes in the availability of exportable grain that occurred during the preceding three months. Had GrainCorp not taken the decision to follow this course of action, the relevant booking fees would have been forfeited.

The decision to waive the fees at that time in no way undermines the basic principle that the booking fee acts to curb any inclination, given the opportunity, of grain traders to speculate with grain elevation capacity at times of peak demand.

AWB Inability to Book Elevation Capacity

AWB claims that it was *'...prevented from booking slots (between May and September 2010) because of the slots already booked by GrainCorp's commodity trading arm.'* AWB's contentions in this regard are contextually inaccurate.

Under the first-in-first-served port elevation capacity booking process, *all* exporters have an equal opportunity to make bookings between 1 October and 30 September (shipping year), across all seven GrainCorp port elevators. The GrainCorp shipping stem opens several months prior to the commencement of the shipping year, allowing exporters a significant period of time to plan their proposed export activities.

All cargo nominations received by GrainCorp are placed on the shipping stem the day following their receipt. Exporters can consult the daily shipping stem to see what capacity has been booked and which exporter has booked the capacity. GrainCorp also sends to exporters a daily 'available export elevation capacity' report to make elevation booking easier. Therefore, the existing booking system is entirely transparent.

In its submission, AWB claims that GrainCorp is unfairly favouring the company's own trading operations by booking excessive capacity, stating GrainCorp had booked *'...as much as 41% of all slots booked through the period (May to September 2010).'*

During the period in question, total elevation capacity booked by exporters was ~1.6 million tonnes, which accounted for approximately 30% of an available 5.2 million tonnes capacity.



GrainCorp

GrainCorp's elevation bookings represented 41% of the bookings made (being 30% of available capacity) and GrainCorp's bookings, therefore, represented only 13% of total elevation capacity available during the period.

In contrast to AWB's assertion, the above evidence shows that GrainCorp did not book excessive capacity in favour of its own trading operations and, therefore, did not prejudice any other exporter - significant capacity was available for booking by other exporters.

In contrast to the inaccurate assertion by AWB, an example of the fairness of the current system can be demonstrated by the following example.

Bookings made by AWB at GrainCorp's Carrington elevator during May to September 2010 totalled 162,500 tonnes, compared to GrainCorp's 45,000.

In particular, the comparisons made by AWB between the quantum of bookings made by GrainCorp on the eastern Australian shipping stem, and the quantum of GrainCorp's bookings on the South Australian shipping stem, is contextually misleading.

Given that GrainCorp operates a grain storage network in Queensland, NSW and Victoria, and not in South Australia, the majority of its bookings will be through the network in those states and not through the network in South Australia.

This point is supported by the evidence presented in AWB's own submission. In AWB's Figure 2 relating to Viterra's shipping stem in South Australia, Viterra accounted for 29% of bookings, GrainCorp 1% and CBH 18%. In Figure 1, relating to GrainCorp's shipping stem, GrainCorp accounted for 36% of bookings, Viterra 4% and CBH 7%.

Similar analysis of the CBH shipping stem for the same period is likely to indicate that CBH was a major exporter from its own network, and that both Viterra and GrainCorp would have a much smaller share of bookings and grain exports in that region on the basis that it is not the geographic region where Viterra and GrainCorp's core operations are located or grain trading activities conducted.

Port Terminal Protocol Variations

Like the AGEA, AWB claims that GrainCorp has the capacity to vary the Protocols. As previously stated, this assertion is incorrect.

As such, AWB's arguments relating to GrainCorp's ability to vary the Protocols is incorrect.

No other exporters using the GrainCorp port elevator network have raised criticisms in relation to, or opposed, the flexibility within the Protocols that allows exporters to dissect and move booked elevation capacity between requested elevation periods, and between elevators.

AWB states that '*...the subjective views of GrainCorp port operations...*' govern the flexibility within the GrainCorp Protocols. This is incorrect as the processes for a) seeking and b) evaluating a proposal to dissect or move elevation capacity are set out in the Protocols, as approved by the ACCC and are, therefore, not subjective in any respect.

Secondary Market for Port Elevation Capacity

AWB expresses a preference for the establishment of a secondary market for 'surplus' port elevation capacity, claiming that such a market would have '*...no negative effect*'.



GrainCorp

As previously stated, the Protocols allow an exporter to 'move' their booked capacity between requested elevation periods, and between elevators. The creation of a secondary market for port elevation capacity would lead to –

- speculative booking of elevation capacity by traders at peak times, where such bookings would be made in the hope of extracting a premium from other exporters who may be 'distressed' at times of peak demand,
- an increase in the cost of export elevation, as the 'premium' demanded by the secondary market would be considerably higher than the \$5/T booking fee,
- false market signals based not on export demand, but on the activities of parties seeking to speculate in, and make windfall profits from, trading elevation capacity,
- a decrease in port elevator efficiency driven by uncertainty created by speculative trading of elevation capacity.

Therefore, GrainCorp remains of the view that establishment of a secondary market would be likely to have a negative impact on the industry.

Port Efficiency

AWB claims that the move by GrainCorp to reduce and simplify grain intake charges is discriminatory, has reduced efficiency, and has increased costs.

The fee structure changes made by GrainCorp removed the approved and non-approved storage classification, and simplified charges to a \$1.54 / T differential between grain received ex-GrainCorp storage, and ex-all other storage sources.

This has not decreased grain handling efficiency, and AWB has failed to provide any evidence to sustain its claim. The changes were driven by the changing demands of the market, following the removal of AWB's former monopoly on bulk wheat exports in July 2008.

Shared Risk

AWB is seeking the introduction of a despatch–demurrage arrangement, in an attempt to shift commercial supply chain risk from itself, as the exporter, onto GrainCorp as the elevation service provider.

The supply chain that delivers grain to the GrainCorp port elevators is not 'integrated' into the elevator operations. That is, port elevation services are not 'bundled' with grain storage or transportation services.

This 'disjointed' supply chain means that GrainCorp does not have full control of the inward flow of all grain delivered to the company's port elevators and, as such, does not have full control of the following variables that can disrupt the efficiency of grain storage and vessel loading –

- The grades or commodity being shipped;
- The quality of grain being delivered; or
- The method of transport to the elevator.

As such, GrainCorp should not be held responsible for the failure of third parties to –

- Accumulate sufficient grain for a cargo to be loaded on time;
- Where transport not provided by GrainCorp fails to perform; or
- Where grain delivered to a port elevator fails to meet relevant receipt standards, or the exporters own contract standards.



GrainCorp

A despatch–demurrage arrangement of the type sought by AWB would have the effect of transferring all supply chain risk onto GrainCorp, regardless of whether GrainCorp is a supply chain service provider or not.

In the absence of significant re-engineering of the current supply chain, to create a ‘bundled’ model where GrainCorp would have control of the sourcing of grain, its transport to the port elevator, and its elevation onto a vessel, a despatch–demurrage arrangement of the sort proposed by AWB and Glencore would present an unacceptable commercial risk to the company.

A supply chain of the sort mentioned above would be similar to the CBH Grain Express arrangement currently in place in Western Australia that has proven to be inefficient, unworkable and not favoured by industry participants.

Publication of Information

In its submission, AWB states that it *‘...would like more data to be available through the (shipping) stem including commodity, and country of destination, such information is critical to an efficient market place.’*

In relation to a request for the inclusion of commodity information on the GrainCorp shipping stem, GrainCorp emphasises that this information has been published on the GrainCorp shipping stem since 2008. As such, GrainCorp has difficulty understanding AWB’s proposal in this regard.

GrainCorp considers information about the country of destination of a grain cargo to be irrelevant. The country of destination has no impact on the management of port elevator capacity, or grain cargo accumulation and is in no way *‘...critical to an efficient market place.’*

GrainCorp, therefore, does not consider it necessary or appropriate to publish information relating to customer destinations, which is of the nature market intelligence data, on its shipping stem.

It is noteworthy that prior to the removal of the single desk in July 2008, AWB did not publish this sort of information, citing it as being ‘commercial in confidence’, and claiming that its public release would compromise its marketing program. This supports GrainCorp’s assertion that it is not appropriate to publish this information.

GrainCorp Operations Limited

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